IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962.

No. 604

DIVISION 1287 OF THE AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES OF AMERICA ET AL., *Appellants*,

vs.

STATE OF MISSOURI, *Appellee*.

On Appeal from the Supreme Court of Missouri

BRIEF FOR APPELLEE

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OPINION BELOW

The opinion of the Supreme Court of Missouri is reported at 361 S.W.2d 33.

JURISDICTION

The Missouri Supreme Court entered its judgment October 8, 1962, affirming, as modified, an injunction issued

by the Circuit Court of Jackson County, Missouri, enjoining a strike against the State of Missouri during State possession and operation of a utility (R. 198). Although this judgment was not then final under Missouri procedure, notice of appeal was filed on October 8, 1962 (R. 199). The Jurisdictional Statement was filed in this Court on November 20, 1962, and probable jurisdiction was noted on January 14, 1963 (R. 202). Appellants rely on 28 U.S.C., §1257(2), as conferring jurisdiction on this Court to review by appeal the judgment of the Missouri Supreme Court.

By his Executive Order, effective 11:59 P.M., January 12, 1963, the Governor of Missouri terminated State possession and operation of the utility. Under the King-Thompson Act, as construed by the Missouri Supreme Court, this release had the effect of relieving appellants of all restraints imposed against them by the judgment (R. 183). There is no longer an actual case or controversy on the merits with respect to which the judgment of this Court could be effective. The controversy having become academic and the case moot, for want of a subject matter, this Court does not have jurisdiction of the merits of the appeal.

STATUTES INVOLVED

Sections 295.180, 295.200(1), 295.200(2), 295.210, and 295.010 of Chapter 295, Revised Statutes of Missouri, 1959 (King-Thompson Act), set out in Appendix A to Appellants' Brief; Labor-Management Relations Act, 1947, 29 U.S.C. § 141 *et seq.*, set out in Appendix B to Appellants' Brief.

QUESTIONS PRESENTED

1. Does the National Labor-Management Relations Act deny to the State of Missouri the right to enact, under its reserved police power, those sections of the King-Thompson Act, severable from the remainder of the Act, which (1) authorize the State, upon a finding by the Governor, judicially reviewable, that a strike or threat of strike by utility employees has in fact created an emergency threatening the public health, safety and welfare with impending disaster, to take possession of the physical property of the utility for use and operation by the State in the public interest during the period of the temporary emergency and (2) sustain an injunction against a strike or concerted refusal to work for and under the supervision of the State during the period of State possession, control and operation?

2. Do said sections of the King-Thompson Act, as construed by the Court below, deny utility employees due process in violation of the Fourteenth Amendment of the United States Constitution, or impose involuntary servitude in violation of the Thirteenth Amendment of the United States Constitution by requiring the postponement of the exercise of the right to strike until the end of the temporary emergency which threatens the public health, safety and welfare with impending disaster, and during which period the State is in possession of the property of the utility for use and operation by the State in the public interest, but which sections do not require State possession and operation until the settlement of the labor dispute, nor otherwise prohibit strikes or other concerted actions by utility employees?

STATEMENT

An impasse having been reached in collective bargaining negotiations between appellants Division 1287 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America (herein called the Union) and Kansas City Transit, Inc. (herein called the Company) (R. 163, 68), members of the Union voted to strike against the Company (R. 71), effective at midnight, November 13, 1961 (R. 163, 72). Thereafter, after investigation, the Governor of Missouri issued a proclamation on November 13, 1961, that the public interest, health and welfare were jeopardized by the threatened interruption of the operation of the utility by the threat of a strike, and that it was necessary that he exercise the authority vested in him by statute to insure the operation in Missouri of the utility (R. 132-133). On the same date, the Governor issued his executive orders taking possession of the plants, equipment and all facilities of the Company in Missouri for the use and operation by the State of Missouri in the public interest, effective at 11:59 P.M., November 13, 1961 (R. 134-137). The Union, by concerted action, refused to operate the transportation facilities after the physical properties of the Company were in the possession and under the control of the State of Missouri (R. 5, 131, 167), and the strike previously called went into effect (R. 72, 167) despite State possession, control and operation until service of a temporary restraining order in this suit (R. 72). The petition for an injunction was filed by the State of Missouri on November 15, 1962 (R. 167), in the Circuit Court of Jackson County against the Union, its officers and members, appellants here (R. 1-6). The Company was not a party to the action (R. 159, 175). After a hearing, the Circuit Court issued the injunction appealed from on

February 12, 1962, restraining appellants from "continuing, inciting, supporting and participating in the work stoppage, refusal to work and strike against the State of Missouri." (R. 128). On appeal from the injunction decree, the Missouri Supreme Court, on October 8, 1962, modified the judgment so that the trial court would retain jurisdiction of the cause with the right to modify the decree in accordance with changing facts and conditions (R. 184), and, as modified, the judgment was affirmed (R. 198).

Thereafter, on December 28, 1962, the Governor of Missouri, after investigation, found that although the labor dispute had not been settled, State possession and operation of the utility was no longer necessary to protect the citizens of the State from disaster, terminated State seizure and ordered that all direction and control of the utility's property be relinquished to the Company effective January 12, 1963 (Appendix, Appellee's brief). The State's possession and operation of the utility ended as of 11:59 P.M., January 12, 1963.

SUMMARY OF ARGUMENT

I.

The case is moot. The judgment appealed from enjoined appellants from striking against the State of Missouri after the Governor took possession of the physical property of the Transit Company for the use and operation by the State of Missouri in the public interest. Under the King-Thompson Act, as construed by the Court below, State possession and operation of the property of a utility is not authorized except upon a finding by the Governor, reviewable by the courts, that an emergency exists which threatens the public health, safety and welfare with imminent jeopardy and disaster.

Although State possession must, in any case, terminate as soon as practicable after settlement of the labor dispute, such possession and operation by the State may not validly continue after it is no longer necessary to protect the citizens of the State from disaster, even though the labor dispute remains unresolved. A permanent emergency is not envisaged by the Act and a permanent injunction against a strike is not authorized. Both the seizure and the injunction in aid thereof relate to a purely temporary emergency situation.

On December 28, 1962, the Governor, after investigation, found as a fact that a strike or the threat of a strike would no longer threaten the citizens of the State with disaster or jeopardize the public interest. Under the Act, as construed by the Court below, it became and was the mandatory duty of the Governor to vacate State possession, control and operation, and for such reason the Governor released control of the utility's property effective 11:59 p.m., January 12, 1963. Such release automatically relieved appellants of the injunction appealed from.

The injunction from which the appeal was taken expired by its own terms with the release of the property, and there is no subject matter presently in existence upon which a judgment of this Court can operate. *Local No. 8-6 v. Missouri* 361 U.S. 363; *Harris v. Battle*, 348 U.S. 803. There is presently no controversy between the parties except the academic dispute relating to the validity of certain sections of the King-Thompson Act on the authority of which the State, through its Governor, initially acted to seize the Transit Company's properties and obtain the injunction.

The State could not legally retain possession and control of the Transit properties for the sole purpose of avoiding mootness. The Governor could not properly permit

the extraneous circumstance of the pendency of an appeal to affect his duty under the law to release the property inasmuch as the requisite jeopardy to the public interest when the strike or threat of strike had ceased to exist. There is not the slightest basis of fact for appellants' assertion that a renewed strike would ultimately result in renewed seizure, and such argument is contrary to the Governor's finding.

II.

The Court below held that those sections of the King-Thompson Act which authorize the seizure of the property of a utility for use and operation by the State in the public interest are severable from all other parts of the Act. This case does not involve the validity of any of the remaining parts of the Act, including those relating to the State Board of Mediation, and compulsory hearing, fact-finding or recommendation procedures applicable to labor disputes in privately owned utilities. The Court below held that those sections of the Act which authorize the State to take possession of the property of a utility for State operation in an emergency which seriously jeopardizes the health, welfare and safety of the public and forbids a strike against the State which would interfere with State operation during such temporary emergency are valid independently of the remainder of the Act, and that it was unnecessary to determine the validity of any other sections to sustain the grant of injunctive relief. The construction of the severability of the sections of the State law immediately involved in this case, is conclusive on this Court. *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572; *Allen-Bradley Local v. Wisconsin Board*, 315 U.S. 740. Appellants on appeal to this Court attempt to draw in question the remaining parts of the King-Thompson Act, but no such issue was decided below nor was necessary for the determination of the propriety of injunctive relief.

III.

The King-Thompson Act, enacted under the police power of the State, authorizes State seizure and operation of the property of a utility for the protection of the public against disaster during a temporary emergency period. The property of the utility may not be seized as a matter of course merely because a strike is threatened or has been called by its employees, and it has not been so construed either judicially or administratively. Nor does the mere existence of an emergency of itself authorize State seizure and operation of a utility. The emergency must be one which truly jeopardizes the public interest, safety and welfare to a degree sufficient to create a threat of imminent public disaster. Those sections of the Act involved on this appeal are premised upon the basic sovereign right of self-preservation of the State and are not intended to regulate, and do not have the effect of regulating, labor-management relations.

Collective bargaining between the utility and its employees is not interfered with at all by the Act. Nor is the right of utility employees to strike affected, except that during the temporary period the State is in possession and control of the property of the utility, the employees may not, by concerted action, interfere with operation by the State necessary to prevent public disaster. Any strike during the temporary period of State possession and operation is truly a strike against the State and not against the utility, and such a strike is not a protected activity under the National Act. The State may not retain possession and control after the threat of disaster no longer exists, even though the labor dispute itself has not been settled. The strike weapon remains for use by the employees, but when timed to be inimicable to the public interest, its use is temporarily postponed during the brief

period public welfare is immediately threatened and in substantial jeopardy.

The Act is not in conflict with or pre-empted by the National Act. Congress has not manifested an intent to exclude the exercise of State police power to protect the citizens of the State during a temporary emergency period when disaster threatens. The National Act contains no clear positive mandate guaranteeing an absolute right to strike at any time and under all circumstances without regard to the disastrous effect of the timing of a particular strike upon the public health, safety and welfare, and when such strike is in actuality against the State itself. Sections 1(b) and 13 of the National Act indicate the congressional purpose to permit the exercise of emergency State police power to protect the public, rather than leave the State completely helpless and impotent. The Act, having been enacted in pursuance of the State's dominant local concern in the protection of the public health, safety and welfare, and being applicable only in a temporary emergency situation which results in actual or imminent jeopardy to the public, is not in conflict with either the policy or purpose of the National Act.

The Wisconsin statute involved in the *Amalgamated Association* case is wholly unlike the King-Thompson Act. The Wisconsin statute substituted arbitration upon order of the State Board for collective bargaining whenever an impasse was reached in the bargaining process, and to insure conformity with the statutory scheme Wisconsin denied entirely the right of utility employees to strike at any time. The Wisconsin law was a comprehensive code for the settlement of labor disputes in utilities and rendered true collective bargaining completely ineffective. The Wisconsin law was not emergency legislation and its application did not require the existence of an emergency

jeopardizing vital public interests. Wisconsin prohibited the right to strike irrespective of the existence of an emergency involving jeopardy to the public and was truly a regulation of labor-management relations. The Missouri Act does not embody compulsory arbitration at all nor interfere with the right of free collective bargaining. As construed by the Court below, it is applicable only if an emergency in fact exists sufficiently grave to imperil the public welfare. Such finding is subject to judicial review. The right of utility employees to strike is recognized, and the mere exercise of such right does not, of itself, call for State seizure and operation of a utility. State seizure and operation in the public interest is authorized only upon a finding by the Governor that an emergency exists which, in fact, jeopardizes the public interest and threaten the State with imminent disaster. And it is only during the existence of such temporary emergency and while the State is in possession and control of the utility that a strike or concerted action by the employees is made unlawful. Under the Missouri Act, even after seizure, collective bargaining remains the process whereby the dispute must be settled, and the right to strike may be exercised when the immediate threat of disaster requiring State possession and operation is no longer present, even though the labor dispute has not been settled.

IV.

The King-Thompson Act was enacted under the police power to protect the public interest against imminent disaster by postponing, but by no means prohibiting, certain utility strikes. There is no absolute, constitutionally guaranteed, right to strike, *Dorchy* v. *Kansas*, 272 U.S. 306, 311. Under the Act, the exercise of the right to strike is postponed, but only in those situations in which the State has taken possession of the property of the utility, when neces-

sary to protect the public welfare, for use and operation by the State during the existence of a temporary emergency threatening the public interest with imminent disaster. Possession and operation by the State cannot extend beyond the temporary emergency period, even though the labor dispute has not been settled. The prohibition against a strike is limited to the temporary period of State possession and operation, and is necessary to effectuate the purpose of preventing imminent disaster which would result from interference with State operation. As thus construed, the Act is neither arbitrary nor capricious, nor does it deprive utility employees of the right to strike or interfere with free collective bargaining. There is no denial of due process.

Appellants' claim that the Act imposes involuntary servitude by prohibiting strikes has no basis under the record of this case. *International Union* v. *Wisconsin Employment Relations Board*, 336 U.S. 245, 251. No person was compelled to work against his will or even to remain in the service of either the State or the utility, nor does the Act create any such compulsion. All that is prohibited is concerted action which has the effect of interfering with State operation undertaken to protect the public. The right to strike is in nowise affected except only as to the time such right may be exercised.

ARGUMENT

I.

THIS CASE IS MOOT BECAUSE THE INJUNCTION APPEALED FROM HAS EXPIRED BY ITS OWN TERMS.

The judgment appealed from enjoined appellants from striking against the State of Missouri. The injunction was issued after the Governor took possession of the property of the Company for the use and operation by the State of Missouri in the public interest. The sole question involved on the appeal to the Missouri Supreme Court was whether the appellants should be relieved of the restraint imposed by such injunction. No declaratory relief was sought in the pleadings or granted by the Court.

Subsequent to the decision of the Missouri Supreme Court affirming the injunction order, the Governor of Missouri by an Executive Order issued under date of December 28, 1962, vacated the seizure of the property effective at 11:59 P.M., January 12, 1963. See Appendix, *infra* (pp. 1a-3a). The Executive Order recited that the authority conferred upon the Governor to seize the property is exercisable only for the purpose of protecting the citizens of this State from disaster in an emergency situation and contained the finding that the continued exercise of such authority by the Governor was no longer justified.

It follows that as of 11:59 P.M., January 12, 1963, the properties of the Transit Company are no longer in the possession of the State and the seizure has terminated. As stated in appellants' brief (p. 58), the injunction "takes

its sole force and efficacy from the seizure." The Court below, in holding that the King-Thompson Act cannot be construed to make any provision for the permanent operation of a utility after seizure, specifically ruled that "there is no provision in the Act requiring state operation and control until a settlement of the labor dispute has been reached" (R. 184), that "the Governor may release the control of a utility's physical property at *any time* after seizure" and that "any such release would relieve appellants from the particular judgment entered in this case." (R. 183). This construction of the Act by the Court below is binding on this Court. *Kingsley International Pictures Corp.* v. *Regents of University of New York*, 360 U.S. 684, 688; *Allen-Bradley Local* v. *Wisconsin Employment Relations Board*, 315 U.S. 740, 741; *Aero Mayflower Transit Company* v. *Board of Railroad Commissioners of Montana*, 332 U.S. 495, 499-500. Under these circumstances, appellants have been relieved of the injunction without the necessity of further action by this or any other court.

Under the King-Thompson Act, as construed by the Missouri Supreme Court, a permanent emergency situation is not envisaged thereby and a permanent injunction is not authorized (R. 184). Both the seizure and the injunction predicated thereon relate only to a purely temporary situation and may not extend beyond the duration of the purely temporary emergency. The Governor of Missouri found that the emergency situation no longer in fact exists, and for said reason released the property to the Company. Appellants are no longer enjoined from striking against the State of Missouri. And it is to be noted that the injunction order appealed from did not enjoin appellants from striking against the utility. In this situation, the present case, insofar as appellants in good

faith are seeking to be relieved from the consequences of the judgment appealed from, is moot.

From the inception of this litigation, appellants have urged that their right to strike has been prohibited. Their basic complaint against the injunction, from which alone they have appealed or have the right to appeal, is that it has the effect of preventing a strike against the utility. By his release of the property to the Company and the vacation of the seizure, the Governor of Missouri thereby removed all restraints upon appellants, so that they are presently, and have been since January 12, 1963, as free to strike as effectively as though the injunction had never been granted or the property seized. Hence, the real complaint of appellants at this time is not that there is presently any judicial restraint upon their free exercise of the right to strike, but rather that they have been relieved of this restraint by the action of the Governor and not by this Court.

It may well be asked in the instant case precisely what subject matter is presently in existence upon which the judgment of this Court can operate. All restraints against appellants having been removed by the vacation of the seizure, a reversal of the judgment of the Supreme Court of Missouri affirming the injunction would serve no useful purpose or grant appellants any relief. There is now "no actual controversy between the parties—no issue on the merits which this Court can properly decide." *Brownlow* v. *Schwartz*, 261 U.S. 216, 217; *United States* v. *Alaska Steamship Co.*, 253 U.S. 113, 116; *United States* v. *Hamburg-American Line*, 239 U.S. 466, 475-8. Any judgment of this Court relating to the right of appellants to strike would be advisory only in the circumstances of the instant case.

This Court has consistently refused to adjudicate cases which are, in fact, moot. Thus, in *Amalgamated Association of Street, Electric and Motor Coach Employees of America, Division 998*, v. *Wisconsin Employment Relations Board*, 340 U.S. 416, this Court held moot an action which arose out of the threatened strike which was involved in the *Amalgamated* case relied on by appellants. In the case held moot, arbitrators, acting under the Wisconsin Act, had rendered an award which was to be effective for one year from date unless sooner terminated by agreement of the parties. The award was superseded by agreement and, in any event, the one-year period had elapsed. This Court held, therefore, that "there being no subject matter upon which the judgment of this court can operate, the cause is moot."

In *Local No. 8-6* v. *Missouri*, 361 U.S. 363, this Court declined to review, on the ground of mootness, the decision of the Supreme Court of Missouri upholding the validity of an injunction issued under the King-Thompson Act for the reason that the injunction had expired by its own terms. This Court stated: "Any judgment of ours at this late date 'would be wholly ineffectual for want of a subject matter on which it could operate. An affirmance would ostensibly require something to be done which had already taken place. A reversal would ostensibly avoid an event which had already passed beyond recall. One would be as vain as the other.' To adjudicate a cause which no longer exists is a proceeding which this court uniformly has declined to entertain.'" Appellants' Jurisdictional Statement, in requesting the case be advanced, correctly stated (page 26): "This Court in *Local No. 8-6* decided that the state injunction becomes moot when it expires upon the vacation of seizure." The *Local No. 8-6* case controls the disposition of the instant issue.

Just as in the *Local No. 8-6* case, the present injunction has expired by its own terms. The prohibition therein is directed at a strike against the State of Missouri subsequent to the seizure of the property of the Company for use and operation by the State. The Governor having released the property to the Company and terminated State possession and operation, there is no subject matter upon which the injunction can presently operate, and it has, therefore, expired by its own terms. The Governor found that a strike threat at this time no longer jeopardizes the public interest. The mere fact that the labor dispute between the Company and the Union has not been settled in no way affects the undisputed fact that the injunction from which appellants have sought to be relieved has expired by its own terms and no longer restrains or affects appellants' right to strike.

Harris v. *Battle*, 348 U.S. 803, is also directly in point, as this Court expressly held in the *Local No. 8-6* case. That case was one to enjoin the enforcement of a Virginia statute under which the Governor had ordered that possession be taken of a transit company whose employees were on strike. The employees, not the state, affirmatively sought both injunctive and declaratory relief in the circuit court. That court not only denied an injunction, but entered a declaratory judgment to the effect the state's seizure was valid. Yet this Court held that the subsequent settlement of the labor dispute and termination of the seizure made the controversy moot. In truth, it was not the settlement of the dispute but the termination of the seizure which was the decisive factor, for the reason that the Union's complaint was directed against the action of the State and the consequences thereof. This Court rejected contentions there made almost identical to those presently urged by appellants that "the controversy was not moot

because of the continuing threat of state seizure" and that the State's abandonment of its alleged unconstitutional activity "after its objective had been accomplished" should not be allowed to forestall a decision as to the validity of the statute under which the State had purported to act. The same contentions were rejected in *Local No. 8-6*.

The Governor released the property to the Company because the King-Thompson Act, as construed by the Missouri Supreme Court, simply does not authorize State possession and operation when the emergency situation threatening the public health, safety and welfare with impending disaster no longer exists (R. 184-185). In these circumstances, it was the mandatory duty of the Governor under the Act to vacate State possession, control and operation. The Governor could not properly permit the extraneous circumstance that an appeal is pending to affect his duty to release the property when the requisite jeopardy has ceased to exist. The State has no legal right to retain possession and control of the transit property for the sole purpose of avoiding mootness and permitting an adjudication by this Court.

Appellants argue that there is a possibility that the Company may again be seized. However, that is purely hypothetical, and in any event would depend upon facts which are presently not before this Court. The suggestion that seizure was vacated and the property released in bad faith and as a mere "manipulation" by the State of Missouri to prevent an adjudication by this Court is without any factual basis and improperly impugns the motives and integrity of the Chief Executive of Missouri. Such unfounded charge could be given consideration only if the Governor should again order the property of the Company seized without a substantial change in the underlying situation and should the State then seek a new injunction.

There is presently no dispute whatever between the parties in this case other than the academic dispute relating to the validity of certain sections of the King-Thompson Act. This is not a proceeding seeking a declaratory judgment on behalf of appellants relating to any or all of the provisions of the King-Thompson Act. The instant situation is wholly unlike those in which a *defendant*, by discontinuing the conduct complained of, seeks to avoid the grant of affirmative relief to an injured plaintiff. Here, it was not the defendants (appellants) but the *plaintiff* (the State of Missouri) which sought relief and obtained an injunction. The suit was filed and prosecuted, not for the benefit of appellants, but to protect the public interest during the existence of a temporary emergency.

The only legitimate purpose of the appeal from the judgment was to be relieved of the restraints imposed thereby. The action of the Governor has served precisely the same purpose. Hence, any further consideration of the issues of this case would constitute no more than the grant of an advisory opinion. As we read the decisions of this Court, it is not set up to vindicate hypothetical rights or render advisory opinions. The "duty of this Court 'is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.'" (361 U.S. 363, 367, quoting *Mills* v. *Green*, 159 U.S. 651, 653.)

As stated in Stern and Grossman, *Supreme Court Practice* (3rd Ed. 1962), p. 434:

> "The Supreme Court, like any other court, may lose jurisdiction over a case because of the occurrence of facts outside the record which terminate the controversy. The Court has constitutional jurisdiction only

over actual cases and controversies, between adverse interests, with respect to which the Court's judgment will be effective. If the controversy becomes academic by reason of changing circumstances, the Court's jurisdiction ceases."

That the underlying economic dispute in the present case had not been settled does not in any way alter the fact that there is no longer any subject matter upon which the injunction may presently operate. This case does not involve, nor is there a threat of, any penalties or other consequences of the conduct of appellants. The sole question decided by the Missouri Supreme Court was that the injunction was valid, and this injunction is no longer in effect. Seizure having been terminated by the Governor after investigation and determination that there is no factual emergency situation justifying the continuance of such seizure, the parties to the labor dispute are and have been since January 12, 1963, free to act as though such seizure had never taken place. The case is now moot in every respect.

II.

THE QUESTIONS PRESENTED ARE OF LIMITED SCOPE AND INVOLVE ONLY THAT SEVERABLE PART OF THE KING-THOMPSON ACT RELATING TO STATE SEIZURE AND OPERATION OF UTILITIES IN EMERGENCIES.

The questions presented by this appeal are by no means as broad and comprehensive as appellants seek to ha decided. The Missouri Supreme Court considered the validity of the King-Thompson Act only insofar and to the extent particular sections thereof, held to be severable (R. 178-179), were immediately involved in the determination of the propriety of the injunction issued by the trial court

(R. 182). The Act as a whole was not before the Court for consideration (R. 186).

The determination of the appeal below did not involve the validity of any section of the King-Thompson Act relating to any compulsory hearing, fact-finding or recommendation procedures applicable to labor disputes in privately owned utilities. It did not involve the validity of any section of the King-Thompson Act which might be construed as prohibiting a strike against the utility during the pendency of the State seizure (R. 183). It did not involve the validity of any section of the King-Thompson Act providing for penalties or loss of employee rights as the result of a strike against the utility (R. 186). The existence of jeopardy to the public interest, health and welfare has been conceded by appellants and is not an issue (R. 171, 172-173, 185, 182). Likewise, the claim of extraterritorial operation of the King-Thompson Act or that it offends the Commerce Clause because it attempts to regulate interstate commerce have been expressly removed from the case by appellants (R. 174-175, 179).

The seizure of the property of the Company by the Governor was not predicated upon, nor even referable to, any refusal of the appellants to meet with, accept or abide by any recommendations made by the State Mediation Board (R. 164, 165, 132, 134, 136). On the contrary, the sole basis upon which the property was seized was the finding by the Governor that the threatened strike by appellants threatens the effective operation in Missouri of the utility and jeopardizes "the public interest, health and welfare." Hence, the sole question relating to the validity of the King-Thompson Act which is involved in this case is whether, in a situation in which the public interest, health and welfare are in fact jeopardized, as determined by the Governor and found by the court, a state law may

validly authorize the State to take possession of the physical properties of the utility "for the use and operation by the State of Missouri in the public interest" for a limited period of time during the existence of the temporary emergency resulting from a threatened strike.

A strike had been called against the Transit Company prior to seizure (R. 167). Such action was *not* in violation of the King-Thompson Act as construed by the Missouri Supreme Court (R. 187, 188). Subsequently, the Governor, *after* investigation, determined that the public interest, health and welfare were jeopardized by reason of the threatened interruption of the mass transportation operations in Missouri of the Company and that it was *necessary* that he take possession of the plants, equipment and facilities of the Company located in the State of Missouri "for the use and operation by the State of Missouri in the public interest" (R. 164-165). The strike previously called went into effect after seizure by the State, and the concerted refusal by the employees to work for the State was supported and participated in by appellants. This injunction suit was instituted by the State of Missouri as the result.

The question ruled by the Supreme Court of Missouri was the validity of the injunction issued by the circuit court, after hearing, restraining appellants "from continuing, inciting, supporting and participating in the work stoppage, refusal to work and strike *against the State of Missouri*" (R. 183, 175, 158). The issue, as stated by the Court, was "whether the police power of the state may be exercised in an emergency and pursuant to state statutes to take over and maintain the operation of the public transportation system of a great city when the public interest, health and welfare of the state is jeopardized as the result of the sudden interruption and discontinuance

of such service by reason of a strike by the employees of the transportation company against their employer" (R. 159).

Emphasizing that the transportation company was not a party to the action, the Court stated that "The basis of the proceeding is that the employees of the Company by a concerted refusal *to work for and under the supervision of the State*, after the Company's equipment and transportation facilities had been taken over by the State, have violated the law of the State" (R. 159). The Court further held "The Act does not prohibit or curtail strikes by employees, absent an emergency jeopardizing the health, welfare and safety to the public sufficient to authorize and sustain the action of the Governor in taking possession and control of the physical properties, plant and transportation facilities of the employer-company against which the strike is directed. Even then judicial action is required to obtain enforcement." (R. 182).

The only provisions of the King-Thompson Act which the Missouri Supreme Court considered in the determination of the instant case are Sections 295.010, 295.180, 295.200(1) and (6), and 295.210, RSMo 1959, to the extent they authorize State seizure and operation of a utility in an emergency and injunctive relief in aid thereof (R. 160-161). The Court specifically ruled that these sections of the Act are *severable* from and can stand independently of the remainder of the Act. In particular, the Court reaffirmed its prior holding that those sections of the Act which directly affected the State Board of Mediation, its legal existence, powers and duties, are severable from and do not affect the validity of those sections construed and applied in this case (R. 178-179).

It is well settled that this Court must accept the construction which the Supreme Court of the State has put

upon the State statute. As was held by this Court in *Allen-Bradley Local* v. *Wisconsin Board*, 315 U.S. 740, the construction of the Act by the State court "is conclusive here," and this doctrine is also applicable to the construction of the severability of sections of a State law. To the same effect is *Chaplinsky* v. *State of New Hampshire*, 315 U.S. 568, 572.

III.

THAT PART OF THE KING-THOMPSON ACT RELATING TO STATE SEIZURE AND OPERATION OF UTILITIES IN EMERGENCIES IS NOT IN CONFLICT WITH OR PRE-EMPTED BY THE LABOR-MANAGEMENT RELATIONS ACT, 1947.

Appellants urge that the Labor-Management Relations Act of 1947 has so completely pre-empted the field of labor relations as to preclude the State of Missouri from enacting *any* legislation for the protection of the public interest which in any way affects labor relations. They further urge that the decision of this Court in *Amalgamated Association* v. *Wisconsin Board*, 340 U.S. 383, controls this case. Appellee takes issue with both such contentions.

A. The Act Is a Valid and Proper Exercise of the Reserved Police Power, Enacted to Protect the Public Interest Against Disaster in an Emergency.

The police power of the State "is not granted by or derived from the Federal Constitution but exists independently of it, by reason of its never having been surrendered by the State to the General Government." *House* v. *Mayes*, 219 U.S. 270, 282. In that case, it was said that the police power includes the power "to so regulate the relative rights and duties of all within its jurisdiction so as to guard the public morals, public safety and the public

health, as well as to promote the public convenience and common good."

The exercise by the State of its police power should never be held to be superseded by federal legislation enacted in the exercise of a power granted by the Constitution "unless the repugnance or conflict is so direct and positive that the acts cannot be reconciled or stand together." *Missouri, Kansas & Texas Railway* v. *Haber*, 169 U.S. 613, 623. The reason is obvious. The police power is reserved to the State under the Tenth Amendment to the United States Constitution. The State should not be held to be deprived of this constitutional power unless no other conclusion is permissible. The purpose of Congress to suspend the exercise of the police power of the State should never be implied. Rather, the intent of Congress to effect such result must be clearly and expressly manifest. *Reid* v. *Colorado*, 187 U.S. 137, 148; *Kelly* v. *Washington*, 302 U.S. 1, 10; *Allen-Bradley Local* v. *Wisconsin Board*, 315 U.S. 740, 749; *House* v. *Mayes*, 219 U.S. 270, 282. In *Illinois Central Railroad Co.* v. *Public Utilities Commission of Illinois*, 254 U.S. 493, 510, this Court stated the applicable principle in this language:

> "In construing Federal statutes enacted under the power conferred by the commerce clause of the Constitution the rule is that it should never be held that Congress intends to supersede or suspend the exercise of the reserved powers of a state, even where that may be done, unless, and except so far as, its purpose to do so is clearly manifested."

This Court pointed out in *Kelly* v. *Washington* that application of the principle of nonexclusion of State authority "is strongly fortified when the state exercises its power to protect the lives and safety of its people. But the principle is not limited to cases of that description. It extends

to exertions of state power directed to more general purposes." (302 U.S., l.c. 10).

Appellee does not contend that federal legislation may be evaded by a State simply by calling the State legislation an exercise of the police power. On the contrary, appellee's position is that the King-Thompson Act, as applied in this case, is *in truth* an exercise of the police power and that there is no provision of the National Act which prohibits the exercise of such police power in these circumstances.

The ultimate object of the King-Thompson Act, as it relates to State seizure and operation, is the protection of the health, safety and welfare of the citizens of Missouri. The Court below, in construing those provisions of the King-Thompson Act relevant to the grant of an injunction, emphasized that "the purpose of seizure is the preservation of community life as encouraged and furthered by the state. The purpose of the Act is to protect its citizens against disaster" (R. 171, 184, 188).

There is no provision in the King-Thompson Act which authorizes or requires the Governor to take possession of the property of a utility simply because a strike is threatened or has been called by employees of such utility. Seizure of the property of a utility does not follow as a matter of course simply because of a strike or a threatened strike. A strike or a threat of one against a public utility may create an emergency. But even the mere existence of an emergency does not call the seizure provision of the Act into play. Only a particular, special kind of emergency authorizes State seizure and operation. It must be one which jeopardizes the public health, safety and welfare to a degree sufficient to create a threat of imminent disaster.

Since the enactment of the King-Thompson law there have been nine instances of strikes in public utilities in Missouri in which the Governor has determined that the public interest, health and welfare were threatened and has exercised the power conferred by Section 295.180 to take possession of the property of the utility involved (R. 194). There have, however, been twenty-one other instances in which strikes have occurred in public utilities in Missouri and in which the Governor has made no finding of threat to the public interest, health and welfare (R. 196). There having been no proclamation of the Governor, the strike was legal under the King-Thompson Act. The King-Thompson Act may be utilized only where vital public interests are jeopardized.

In the Missouri Supreme Court, appellants expressly conceded that the requisite jeopardy necessary to sustain the action of the Governor in seizing the property of the Company existed within the meaning of the King-Thompson Act (R. 171). Hence, whether the Court below correctly decided either the existence of imminent danger to the health, welfare and safety of the inhabitants of Kansas City, Missouri, or the impelling necessity that the property of the Transit Company be seized by the State for State operation in the public interest is not in issue on this appeal. Appellants have taken the position that *irrespective of the existence of jeopardy*, and irrespective of any imminent peril to the community resulting from the work stoppage in a public utility, those provisions of the King-Thompson Act which authorize seizure and State operation in the public interest with a temporary bar against a strike during such seizure period are wholly invalid as being in conflict with the federal law.[1]

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1. The Court below sustained the finding of jeopardy to the public interest, health and welfare as follows:

Appellee does not question the right of utility employees to engage in free collective bargaining backed by the right to strike. It does not question the right of such employees to engage in peaceful strikes to enforce union demands for wages, hours and working conditions against utility employers. The King-Thompson Act as construed by the Missouri Supreme Court does not prohibit free collective bargaining or peaceful strikes against public utilities to enforce union demands. What the Act does make unlawful is "the concerted refusal to work for the State in the operation of the utility after any such plant, equipment or facility has been taken over by the State in an effort to protect the public by use of the police power of the State" (R. 180).

Although it is conceded that employees of public service corporations have the right to engage in peaceful strikes to enforce their lawful demands, it does not follow that the guaranty of such right by federal law completely relieves such employees of all of their expressed and implied obligations assumed by them when entering into the employ of a public service corporation. Employees of public utilities, by entering into such employment, must necessarily acquiesce in subjecting their employment to the exercise

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"A court could well find from the record in this case that the further continuance of the concerted work stoppage by the defendants under the circumstances shown and the continued failure of the defendants to operate the mass transportation system of the city with the facilities and equipment of the transportation company, which had been taken over by the State and were under the supervision and control of the State, might well have resulted in extreme danger to the health, welfare and safety of the inhabitants of Kansas City, Missouri, and in unrest, general confusion, disorganization, excitement, tension, inability to reach places of work in the retail district of the city, reduction of employment and loss of wages by innocent victims of the strike, congestion of traffic, disruption of business, reduction and impairment of law-enforcement agencies and the creation of havoc, disaster and general chaos in the community." (R. 172)

of the police power of the State in temporary emergency situations when the operating properties are taken over by the State. The King-Thompson Act which provides for State seizure and operation in temporary emergencies to protect the public from disaster necessarily becomes a part of their contract of employment, so that such employees may not cavalierly ignore the public interest inherent in such cases. There is no absolute "right" involved in this case which overrides in all instances and completely the exercise of the police power of the State in a reasonable effort to protect the public.

The King-Thompson Act is a proper exercise of the police power of Missouri which can be invoked only when the facts sufficiently justify the impelling necessity of emergency action to prevent irreparable damage and disaster to the public.

B. The Act Deals with the Protection of the Public and Does Not Interfere with Any Right Guaranteed by Federal Law.

The real question presented here is whether Congress, in enacting legislation for the purpose of regulating labor relations affecting commerce, has manifested an intent to remove from the State the necessary authority to act under the police power in an emergency situation "to safeguard the vital interests of its people," *Home Building & Loan Association* v. *Blaisdell*, 290 U.S. 398, 434.

Appellee submits that particularly in a situation where the state legislation has for its purpose the protection of its citizens against disaster, the intent of Congress to override and overrule an exercise of the sovereign power of a state to protect the lives, health, safety and general welfare of its people should be expressly stated in language which cannot be misunderstood. Surely, due regard for the na-

ture of our federal system makes it particularly appropriate that Congress be explicit if it really intends to remove from a state the right to exercise its police power by taking possession of an essential public utility service for the purpose of operating such utility service for a limited emergency period solely to prevent imminent disaster to the citizens of the community.

The congressional intent evidenced by the National Act was to encourage the free flow of commerce by regulating labor relations between employer and employee. It was not intended to immunize from all state regulations conduct which jeopardizes the vital interests of the public. Of significance is the fact that the judgment appealed from in this case "does not purport to deal with the rights between the employer and the employees." (R. 183). "The employer-employee relation is not the subject matter of the action" (R. 188). "The trial court did not attempt to assume jurisdiction of a labor controversy or dispute, nor to decide any labor issues between employer and employee" (R. 175). The strike which was enjoined by the judgment (and which alone is authorized by the King-Thompson Act as construed by the Court below) was a strike against the State which jeopardized the public health, safety and welfare of the citizens of Missouri. Such a strike is not a protected activity under the National Act.

Section 1(b) of the National Act, 29 U.S.C., Section 141(b), specifically provides that employers and employees "*above all* recognize that *under law* neither party has any right in its relations with any other to engage in acts or *practices* which jeopardize the public health, safety or interest." This congressional declaration clearly indicates the congressional purpose to subordinate such acts and practices to the public health. safety and welfare.

The words "under law" as used in the National Act must necessarily include State law enacted to protect the interests of the public as well as federal law "because historically and traditionally the state governments have been vested with the protection of the public health, safety and interests under their general police powers." *State* v. *Local No. 8-6*, 317 SW2d 309, 319. It is to be noted that in those cases in which this Court has construed and applied Section 1(b) of the National Act it has looked to both federal and state law as the case required. Any other construction of Section 1(b) of the National Act would constitute a holding that Congress has manifested its intent that the "public health, safety and interest," as those terms are used in the National Act, are better served by permitting employees to freely strike at any time and under any circumstances without regard to the public welfare or irreparable damage to vital public interests.

There is no language in the National Act which justifies imputing to Congress the intent to callously deny to the State the right to protect the safety and welfare of the public merely to permit the free flow of goods in commerce. Appellee submits that it is not consonant with the proper relationship between our State and Federal governments to hold that Congress intended by the National Act to render a state helpless to protect the interests of its citizens which have been placed in grave jeopardy by the interruption of the operation of an essential public utility service.

The National Act protects the right of collective bargaining. It guarantees the right of peaceful striking. But when a strike is against the *State* and the public, so that it interferes with the operation of essential public utility services to an extent which places in jeopardy the public interests and involves a threat of imminent disaster, surely the State should have the right to protect its citizens dur-

ing the existence of the temporary emergency. And as the Court below pointed out, once the temporary emergency situation ceases to exist, the Governor is required by the King-Thompson Act to release the property.

The Missouri law does not and has not been construed by the Missouri Supreme Court to prevent free bargaining between the employer and the union. The Missouri law does not and has not been construed by the Missouri Supreme Court to authorize any outsider to fix any terms of employment or standards of working conditions. The Missouri law does not and has not been construed to prohibit employees from striking against a utility. The Missouri Supreme Court specifically ruled that the King-Thompson Act constitutes emergency legislation, and has construed the term "emergency" as used in the Act "to imply a temporary situation" (R. 184).

The Court below in the instant case specifically held that the Act did not authorize a permanent injunction prohibiting appellants from striking against either the Company or the State (R. 184). As construed by the Court, the Act does not deny the appellants the right to engage in a peaceful strike against the utility "except by the limitations which are imposed during emergency situations and only after state seizure" (R. 184). The Court pointed out, however, that the decree in this case which was appealed from does not deny the right of appellants to strike against the Company at all (R. 182, 191), and that issue was not decided by the Court. The Court made clear that its decision was limited to the particular issue presented, namely, the validity of an injunction prohibiting a strike against the State after the property of a utility has been seized for State operation pursuant to a finding that the public welfare has been jeopardized.

There is no provision of the National Act from which a congressional intent is manifest to give utility employees a preferred status so that they are removed from the impact of State legislation intended to preserve community life and protect the citizens of the State against disaster conditions which have been temporarily created. Nor is there any provision in the Federal Act which either specifically authorizes or impliedly justifies a strike against a State which has taken possession of the physical properties of an essential public utility for use and operation by the State for a period which may not extend beyond the duration of the temporary emergency during which the essential interests of the public are in jeopardy.

San Diego Building Trades Council v. *Garmon*, 359 U.S. 236, although holding that the particular judgment was barred by the Federal Act, took note of the fact that "the Labor Management Relations Act 'leaves much to states, though Congress has refrained from telling us how much * * *.'" In the course of the opinion Mr. Justice Frankfurter stated:

> "Due regard for the presuppositions of our embracing federal system * * * has required us not to find withdrawal from the states of power to regulate * * * where the regulated conduct touched interests so deeply rooted in local feeling and responsibility that, in the absence of compelling Cngressional direction, we could not infer that Congress had deprived the States of the power to act."

A similar thought is developed further in the *Garmon* opinion, where Mr. Justice Frankfurter states (l.c. 247):

> "* * * the compelling state interest, in the scheme of our federalism, in the maintenance of domestic peace is not overridden in the absence of clearly expressed Congressional direction."

The principle to be derived from that case is simply that the states are not free to regulate conduct which is *plainly* within the central aim of federal legislation because that would involve too great a danger of conflict between the power asserted by Congress and requirements imposed by state law and thereby create potential frustration of national purposes. Appellee submits, however, that the King-Thompson Act, to the extent that the injunction issued in this case has been sustained by the Missouri Supreme Court, could not possibly frustrate actually or potentially any national purpose, either expressed or implied, in the National Act. And it may well be said here, in the language of this Court in the *Garmon* case, that the King-Thompson Act, to the extent here applicable, touches interests so deeply rooted in local feeling and responsibility that in the absence of compelling congressional direction it should not be inferred that Congress has deprived Missouri of the power to act to protect its citizens from disaster. It is difficult to imagine any case in the labor-management field stronger than the instant one as "deeply rooted in local feeling and responsibility" in which the compelling State interest in the maintenance of domestic peace and safety requires the holding that such interest has not been overridden by the National Act.

Appellee respectfully submits that in view of the policy as expressed in Section 1(b) of the National Act, any acts and practices which have the effect of truly jeopardizing public health, safety and welfare contrary to law, state or federal, must necessarily be unlawful, non-peaceful and beyond the protection of federal law. And since the State may take possession of the property of a public utility for the use and operation by the State of Missouri only when the Governor has made a determination reviewable by the courts, that the "public interest, health and welfare are jeopardized," activities such as strikes

which have the effect of interfering with the operation of the utility by the State are no longer a protected activity during the temporary period of State operation.

A strike is not "peaceful" simply because of the absence of violence connected therewith. There are numerous decisions of this Court which make it clear that the right to strike is not an absolute right and that only "lawful" strikes come within the scope and intent of the National Act. Thus, a strike in violation of federal mutiny laws is not a protected activity. *Southern Steamship Co.* v. *National Labor Relations Board*, 316 U.S. 31. A sit-down strike, illegal under state law, is not a federally protected activity. *National Labor Relations Board* v. *Fansteel Metal Corp.*, 306 U.S. 240, 252. Intermittent work stoppages, prohibited under state law, likewise were not a protected activity under Section 7 of the Federal Act. *International Union* v. *Wisconsin Board*, 336 U.S. 245, 258-265. Mass picketing and violence arising out of a strike are not federally protected activities and are subject to state interdiction. *Allen-Bradley Local* v. *Wisconsin Board*, 315 U.S. 740, 748-749; *United Automobile Workers* v. *Wisconsin Board*, 351 U.S. 266, 274-275.

The above examples are not all-inclusive. They are illustrative of situations in which strikes do not constitute protected activities under the National Act.

In *Allen-Bradley Local* v. *Wisconsin Board*, 315 U.S. 740, this Court held that it would not lightly infer that Congress "by the mere passage of a federal act, has impaired the traditional sovereignty of the several states" in exercising their "historical powers over such traditionally local matters as public safety and order and the use of the streets and highways."

In *United Automobile Workers* v. *Wisconsin Board*, 351 U.S. 266, 274, this Court observed:

"The dominant interest of the state in preventing violence and property damage cannot be questioned. It is a matter of genuine local concern. * * *

"The States are the natural guardians of the public against violence. It is the local communities that suffer most from fear and loss occasioned by coercion and destruction. We would not interpret an act of Congress to leave them powerless to avert such emergencies without compelling directions to that effect."

The State of Missouri is the natural guardian of the health, welfare and safety of its citizens. To deny the State of Missouri the right to exercise its traditional authority in the fulfillment of its obligation to protect its citizens in emergencies would deny the State of Missouri its fundamental sovereign authority. Violence on a picket line is directed primarily against the employer and affects only a small segment of the public, yet it is definitely within the orbit of state regulation and excluded from protection under the National Act. *It should be all the more apparent, therefore, that where an entire community is threatened with disaster, the importance and necessity of State action to protect the public should be recognized and permitted.* The State should have the right to make unlawful concerted conduct which jeopardizes the public interest. This is particularly true when such strike can only be against the State after the State has taken possession of the utility for operation in the public interest.

Appellants argue that the construction of the King-Thompson Act by the Missouri Supreme Court to the effect that a strike against the State is prohibited only in conjunction with the possession of the utility by the State does not operate to validate the King-Thompson Act. This argument is premised upon the fact that this Court ruled in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S.

579, that the President had no constitutional power to seize steel mills to avert a national emergency. Arguing from this premise, appellants contend that the power to seize which Congress withheld from the President to avert a national emergency it did not grant to the State Governor to avert a state emergency. What appellants overlook is that the *power* of a State Governor to seize the property of a utility could not be granted by Congress. The power to take possession of the utility property for use and operation by the State in an emergency threatening the State with disaster is and can be conferred upon the Governor only by *State* legislation enacted pursuant to the reserved police power of the State, a power which is inherent and not dependent upon congressional enactment.

Under the King-Thompson Act, as construed by the Court below, the State, upon taking possession of the physical properties of the Company, thereby has the *absolute right of control* of such properties and the operation of the utility. During the time the State is in possession, the utility may no longer control the operation thereof, even though as in this case it acts as the agent of the State for the purpose of effective operation (R. 174). After possession of the property is taken by the State, no employee of the utility is compelled to work or render service. However, if the utility's employees choose to remain in the employment of the utility during the period the State is in possession and control of the property, they are prohibited from interfering with *the State's operation* of the property by concerted action during such period.

It is not particularly relevant whether the employees become employees of the State during the time the State is in possession and control. What is of importance is that the properties are being operated for the use and benefit of the State in the public interest during a period of

emergency, and that during such period neither the employees of the utility nor any one else should have the right by concerted action to engage in any conduct which interferes with the action of the State taken to prevent disaster. As the Act is thus construed and applied, any strike during the possession and operation of the utility by the State is in actuality, as the Court below held, a strike against the State of Missouri and not a strike against the utility. And the injunction affirmed by the Court below barred only a strike against the State which threatened imminent disaster. Such a strike is not a protected activity under the National Act.

The basic fallacy of appellants' argument urging the "incompatibility of seizure with the National Act" is the assumption that seizure is a labor device which destroys the free exercise of the right of collective bargaining, by barring a resort to the strike weapon. On the contrary, "the King-Thompson Act deals with the protection of the public, after such a strike has been called or has been put into effect and after public safety, health and welfare is sufficiently endangered to require the State to be concerned with the operation of the utility and has taken possession of its physical property and seeks to operate the utility under its supervision to prevent public disaster" (R. 191).

Collective bargaining is not interfered with at all by the State's seizure and operation of the Company's property. Both the employer and employees know that the State cannot retain possession of the property except for a temporary period while the urgent emergency exists. Appellants' protestations to the contrary, both employer and employees know that the Act does *not* require State operation and control until the labor dispute is finally settled (R. 184). They know that the threat of a strike

against the employer has not been eliminated, and that it can be made effective the instant grave danger to the general public welfare is no longer present or threatened. Bargaining is no less meaningful.

Moreover, even where, as here, the State has appointed the utility as its agent as a reasonable means of operating the property in the public interest, the operation is nevertheless for and on behalf of the State. The Act did not compel the State to operate the property through the utility company, and the agency may be terminated at any time. In short, there is no incentive for the employer to refuse to consider the terms submitted by its employees. Both parties know that a strike may be called or continued when the public welfare is no longer threatened with imminent disaster. The right to use the strike weapon is postponed, not because the strike is against a utility, but because the time proposed for the use of such weapon in a *particular* utility strike involves substantial jeopardy to the public. The Act was enacted to protect the public, and does not affect any legitimate rights of appellants.

Appellants urge that the seizure in the present case involves only paper possession of the utility. However, the *fact* of possession and the *right of control* derived therefrom cannot be disputed. And appellants' answer specifically admitted the fact of possession (R. 131). The power of the State to exercise control in another manner is still present. Moreover, if the seizure is not sufficiently real such fact would affect only the propriety of the particular seizure and not the inherent validity of the statute pursuant to which the seizure was made.

As the decisions of this Court make clear, a state law, particularly one enacted in the exercise of the police power, should not be struck down unless it has been demonstrated to be wholly irreconcilable with the federal act. Adjust-

ment of state and national interests may not be attained "by reliance on uncritical generalities or rhetorical phrases unnourished by the particulars of specific situations." Mr. Justice Frankfurter (dissenting), *Amalgamated Association v. Wisconsin Board*, 340 U.S. l.c. 403.

To the extent that appellants' right to strike is affected by the King-Thompson Act and by the injunction issued in this case, there is at most no more than a *temporary postponement* of such right for a period which, under no circumstances, may extend beyond the existence of the temporary emergency which threatens the public health, safety and welfare with disaster and during which the utility is operated by and on behalf of the State. The Missouri Act does not prohibit public utility strikes. It does not take away from public utility employees the right to strike as a weapon in the process of collective bargaining. Such weapon remains intact and may be utilized when possession of the property by the State has been terminated and the utility is no longer being operated by and on behalf of the State.

Hence, the Act as construed by the Court below is of limited scope and application, and may be resorted to only for the protection of the public when an emergency places the public welfare in imminent jeopardy. The King-Thompson Act, having been enacted in pursuance of the State's dominant local concern in the protection of the public health, safety and welfare, and being applicable only in a temporary emergency situation which results in actual or imminent danger and jeopardy to the public, there is no conflict with the policy or purpose of the National Act. The obligation to protect the citizens of the State is a fundamental reason for its existence. If the State is to be rendered helpless to protect its citizens during the ex-

istence of local emergency situations, it would follow that disaster could ensue.

Section 13 of the National Act (29 U.S.C., Section 163), guaranteeing the "right" to strike, specifically provides that nothing in the Act shall be construed "to affect the limitations or qualifications on that right." An inherent limitation on that right is that it be exercised with due regard for the public health, safety and welfare. A strike timed to be inimical to the public interests should not be beyond the power of the State to postpone.

The reasoning of Mr. Justice Frankfurter, in his dissenting opinion in *Amalgamated Association*, if applied to the King-Thompson Act as construed by the Missouri Supreme Court in the instant case is cogent and convincing. He there pointed out:

> "Due regard for basic elements in our federal system makes it appropriate that Congress be explicit if it desires to remove from the orbit of State regulation matters of such intimate concern to a locality as the continued maintenance of services on which the decent life of a modern community rests * * *. (340 U.S. l.c. 403).
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> "The real issue before the Court is whether the * * * legislation so conflicts with the specific terms or the policy fairly attributable to the provisions of the federal statute that the two cannot stand together." (340 U.S. l.c. 404).
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> "I find no indication in the (federal) statute that the States are not * * * free to protect the public interest in State emergencies." (340 U.S. l.c. 409).

Mr. Justice Frankfurter pointed out that the exercise by the State of its police power which would be valid if not superseded by federal action is superseded only where the repugnance or conflict is so direct and positive that

the two acts cannot be reconciled or consistently stand together. He reviewed decisions of this Court which justified his conclusion that:

> "The states are not precluded from enacting laws on labor relations merely because Congress has—to use the conventional phrase—entered the field." (340 U.S. l.c. 403).

Mr. Justice Frankfurter discussed the "right" to strike and pointed out that such word is "'one of the most deceptive of pitfalls.' * * * We have several times rejected an invitation to decide cases upon the basis of an absolute right to strike. * * * May the 'right' to strike be also limited by an otherwise valid State statute aimed at preventing a breakdown of public-utility service?" (340 U.S. l.c. 404).

"But the historic amenability to legal control of public callings is rooted deep. * * * *A stoppage in utility service so clearly involves the needs of a community as to evoke instinctively the power of government.* This Court should not ignore history and economic facts in construing federal legislation that comes within the area of interacting State and federal control. To derive from the general language of the federal act a 'right' to strike in violation of a State law regulating public utilities is to strip from words the limits inherent in their context." (340 U.S. l.c. 405).

C. Amalgamated Association Construed a Wisconsin Law, Not Limited to Emergencies, Which Absolutely Prohibited All Strikes in Public Utilities and Substituted Compulsory Arbitration for Collective Bargaining. The Missouri Act Is Fundamentally Different in Scope, Purpose and Application and Is Not Controlled by Amalgamated.

Neither the facts nor the statute involved in *Amalgamated Association* v. *Wisconsin Employment Relations*

Board are comparable to those adjudicated in this case. This Court summarized the Wisconsin Act as follows (340 U.S. l.c. 388):

> "In summary, the Act *substitutes* arbitration upon order of the Board for collective bargaining whenever an impasse is reached in the bargaining process. And, to insure conformity with the statutory scheme, Wisconsin *denies* to utility employees the right to strike." (Emphasis supplied).

The Wisconsin Act expressly declared it to be unlawful for utility employees to strike. This Court took particular note of this prohibition in declaring that Wisconsin sought "to deny entirely a federally guaranteed right" (340 U.S. 394), and that Wisconsin sought "to abrogate that right altogether" (340 U.S. 395-396).

The existence of jeopardy under the Wisconsin Act was wholly irrelevant. Compulsory arbitration in the event of an impasse in negotiations was at the very heart of the law. Hence, true collective bargaining was rendered ineffective by the Wisconsin Act, and the policy of the federal statute that the right of bargaining should not be hampered or destroyed was necessarily interfered with by the state law. Once an impasse was reached, further bargaining in the sense authorized by the federal law was *prohibited*. And since *any* right to strike against the utility was in terms *prohibited*, it is evident that the employees could not bargain effectively. The injunction which was issued in the *Amalgamated* case prohibited a strike against the utility which would cause an "interruption" of its service. It was issued, not because the state had taken possession of the utility nor because of any necessary finding of jeopardy to the public interest by reason of which possession was taken, but simply and solely because *any* strike against a utility was absolutely unlawful in Wisconsin.

The Missouri statute, on the other hand, makes striking unlawful (Section 295.200, RSMo), *only* after the Governor has determined that the public interest, health and welfare are jeopardized and has seized the property of the utility "for use and operation by the State of Missouri in the public interest" (Section 295.180, RSMo). The Supreme Court of Missouri recognized that until such time, the Missouri law does not make *any* strike by public utility employees unlawful. And, as shown *supra*, seizure is neither required nor permissible absent a finding, subject to judicial review, of substantial jeopardy to the public interest.

In ruling *Amalgamated*, this Court stated (340 U.S. l.c. 398):

> "It would be sufficient to state that the Wisconsin Act, in *forbidding* peaceful strikes for higher wages in industries covered by the Federal Act, has *forbidden* the exercise of rights protected by the Federal Act." (Emphasis supplied).

In view of the emphasis placed in the *Amalgamated* case by this Court upon the fact that the Wisconsin Act prohibited strikes altogether, appellee submits that the fact that the Missouri law makes strikes unlawful only in the event of a substantial threat to the public interest, health and welfare is highly significant.

In *Amalgamated* the Wisconsin statute was described by the Court as "a comprehensive code for the settlement of labor disputes between public utility employers and employees" (340 U.S. 393) primarily because it substituted "arbitration upon order of the board for collective bargaining whenever an impasse is reached in the bargaining process" (340 U.S. 388). The Wisconsin statute made the findings of the arbitrators binding upon parties to a labor dispute subject only to the right of judicial review.

This Court also found in *Amalgamated* actual conflict between the Wisconsin Act and the National Act in two respects relating to collective bargaining. The Wisconsin Act required collective bargaining only until an impasse was reached (Wisconsin Statutes, 1949, § 111.52). The federal act requires continued collective bargaining even after a strike. 340 U.S. 388, 399. The Missouri statute does not attempt to terminate collective bargaining at any stage of a labor dispute. Under the Missouri Act, even after a strike or seizure, collective bargaining remains the process whereby the dispute must be settled.

This Court, in *Amalgamated*, further pointed out that the employer could, and did under the Wisconsin Act (Wisconsin Statutes, 1949, § 111.58), refuse, in the arbitration procedure, to consider certain union demands which were properly subjects of collective bargaining between the parties to a labor dispute.

The Missouri statute is definitely not a "comprehensive code for the settlement of labor disputes." It does not embody compulsory arbitration. *State ex rel. State Board of Mediation* v. *Pigg*, 362 Mo. 798, 244 SW2d 75, 81.

The Court below, in distinguishing *Amalgamated*, stated:

> "The King-Thompson Act makes no provision for arbitrators who shall hear and finally *determine* labor *disputes*, nor does the King-Thompson Act deny to utility employees the right to strike. No issue as to compulsory arbitration is presented on this record. The Act does provide for the safety of the public in the event of a strike and the Governor's finding of emergency and for judicial proceeding after the State has taken possession of the utility's property. There is no provision in the King-Thompson Act purporting to provide for concurrent *state regulation* of peaceful

strikes for higher wages. In any event that is not the issue in this case." (R. 188).

A vital distinction between the Wisconsin statute and the Missouri Act is that the Wisconsin statute was not exclusively an emergency measure, whereas the Missouri Act is, having as its purpose the protection of the citizens of the State against disaster (R. 171, 182, 184, 188). With respect to the Wisconsin Act, this Court stated (340 U.S. l.c. 393, 394):

> "However, the Wisconsin Act before us is not 'emergency' legislation but a comprehensive code for the settlement of labor disputes between public utility employers and employees. Far from being limited to 'local emergencies,' the act has been applied to disputes national in scope, and *application of the act does not require the existence of an 'emergency.'*" (Emphasis supplied).

Concededly, this Court, in *Amalgamated*, used language which, out of context, might be taken to exclude the states from acting as a result of strikes in public utilities even in emergency situations. However, the question actually decided in that case was that a state law, not *limited* to emergencies, could not absolutely prohibit strikes in public utilities subject to the federal acts, and substitute compulsory arbitration for collective bargaining. This Court clearly found the Wisconsin statute not to be "emergency legislation" (340 U.S. 393). Since such was the nature of the statute before it, any declarations in *Amalgamated* which purport to invalidate actual emergency state legislation are purely dictum. See *Comment*, 49 *Mich. Law Rev.* 1077, 1079 (1951); also *Annotation*, 22 A.L.R.2d 894, 896.

The Missouri statute is, of course, actual emergency legislation insofar as it has an effect upon the right to strike.

The Missouri Supreme Court characterized the Act as "strictly emergency legislation," * * * "justified under the police powers." "The purpose of the Act is to protect * * * citizens against disaster" (R. 171). The emergency characteristics of the seizure provisions of the Missouri Act are illustrated by the actual operation of the Act. Not every utility strike calls for State seizure.

The right and obligation of the State to protect the health and safety of its citizens in emergency situations have repeatedly been recognized. Among situations where emergency state action has been upheld are the so-called "clear and present danger" cases where it has been recognized that state action may be permitted in such circumstances although the restriction involved might otherwise infringe upon constitutionally protected rights. *Feiner* v. *New York*, 340 U.S. 315, 320; *Cantwell* v. *Connecticut*, 310 U.S. 296, 308.

Emergency state legislation has been upheld although in the absence of emergency the legislation might well have infringed federal constitutional provisions, such as the contract clause. *Home Building and Loan Assn.* v. *Blaisdell*, 290 U.S. 398.

Certainly, the State's authority should not be thwarted and fulfillment of its obligation to protect its citizens in emergency situations must not be precluded because the threat to the citizens arises in a labor dispute. The so-called "right" to strike has never been equated to any constitutional guaranty. *Dorchy* v. *Kansas*, 272 U.S. 306, 311. Appellants' position, if sustained, would elevate such activity above constitutionally protected rights. Furthermore, the very Act of Congress, which is relied upon as the basis of the "right" here claimed, shows that it is subject to limitations. Labor Management Relations Act,

1947, § 13, 29 U.S.C., § 163; *International Union* v. *Wisconsin Board*, 336 U.S. 257, 260. One limitation must be that in situations of imminent danger to the health and safety of the community the public interest must prevail.

As emergency legislation, the Missouri statute stands on a far different footing from the Wisconsin statute involved in the *Amalgamated* case. That fact, together with the other substantial differences between the Missouri statute and the Wisconsin act, removes the Missouri law from the scope of the *Amalgamated* decision.

Insofar as the Wisconsin Act involves "emergencies," it is premised upon the theory that *any* interruption of a public utility service of itself constitutes an emergency and justifies comprehensive regulation of labor relations by compulsory arbitration coupled with an absolute ban on strikes. On the other hand, the King-Thompson Act, as construed by the Missouri Supreme Court, is based on a completely different philosophy. Unlike Wisconsin, the Missouri Act does not prohibit strikes simply because a labor dispute will cause or is likely to cause the interruption of a utility service. Not every so-called "emergency" calls the Missouri Act into operation. There must be a finding by the Governor, sustained by a court of equity, that the particular emergency is of a character which jeopardizes the public interest, health and welfare sufficiently to pose a threat of disaster. Wisconsin did not so limit the operation of its Act. Any danger or jeopardy to the public was merely coincidental, and therefore could not validate the Wisconsin Act.

Whatever may be said with respect to the Wisconsin Act, which wholly *prohibited* the right to strike against a utility in any and all situations, emergency or otherwise, unlimited by the existence or extent of jeopardy to the public interest, it does not follow that a state may not en-

act legislation of limited scope and application in the exercise of its police power for the protection of the public. Missouri's Act, to the extent it authorizes seizure and State operation of the utility, is based entirely upon the inherent right of self-preservation of a sovereign State during a temporary emergency threatening disaster, and does not purport to regulate labor relations. No other part of the Act is involved on this appeal.

There is nothing in the congressional history relating to the National Act which supports appellants' claim that Congress intended to extend the rule of *Amalgamated* to the totally different kind of legislation involved in this case. This Court, in *Amalgamated*, noted that the proposal rejected by Congress for public utilities was a denial of the right to strike, together with the substitution of compulsory arbitration in public emergencies, local or national. This Court pointed out that such rejected scheme was the "pattern of the Wisconsin Act" (340 U.S. 394-395). Such is, furthermore, the pattern of the scheme described in the remarks of Senator Taft and quoted by this Court in *Amalgamated* (340 U.S. 395, Footnote 21), as among the schemes which the committee had rejected. According to the statement of Senator Taft, such plan was rejected because it involved "a process of the government fixing wages" and because, if such process were available, whichever party might feel that it would receive better treatment as a result would not "make a bona fide attempt to settle if it thinks it will receive a better deal under the final arbitration which may be provided." His remarks show quite clearly that the proposal which the Senator was describing as having been rejected by the committee was likewise in the "pattern of the Wisconsin Act."

Subsequent to the decision in the *Amalgamated* case, Senator Taft indicated that the implications drawn by this

Court from his remarks were not in accord with his understanding of Congressional intention. See *Report of Hearings before Senate Committee on Labor and Public Welfare on Proposed Revisions of the Labor-Management Relations Act of 1947, 83rd Congress, First Session*, 1953, *Part 1, page 284*, where Senator Taft stated: "I may say that we never intended any pre-emption of the field. The Supreme Court has gone beyond what we intended."

The proposals thereafter submitted to Congress contained broad and sweeping language designed to authorize state laws providing for compulsory arbitration and an absolute bar on public utility strikes—the pattern of the Wisconsin Act, as well as other and even more restrictive legislation. The remarks of then Senator John F. Kennedy in connection with the 1959 amendment proposed by Senator Holland demonstrated that the proposal did not relate to statutes such as that of Missouri. He stated (105 Cong. Rec. 6740) that there was no warrant "for acceptance on the floor of the Senate of what is in effect a measure for compulsory arbitration, particularly when the courts have the power to act in cases in which the health, safety, and basic welfare of the citizens of the state are at stake. The courts have been given by the states the power to seize industries to protect the public health and safety." Thus, it is obvious that Senator Kennedy argued against the Holland amendment on the specific ground that the states still had the inherent authority to act in the limited emergency situations to which the King-Thompson Act is exclusively applicable.

The Missouri statute, not involving compulsory arbitration, or an absolute ban on utility strikes, is not of the pattern of schemes rejected by Congress. There is nothing to be gathered from the legislative history of the federal enactments and proposals to show that Congress intended

to exclude state action in accordance with the plan embodied in the Missouri statute.

The 1959 Amendment of Section 14 of the National Act in nowise constitutes any expression of congressional purpose to deprive the states of the power to enact emergency legislation such as the King-Thompson Act. That amendment simply provides that the National Labor Relations Board may decline to assert jurisdiction over a labor dispute where in the opinion of the Board the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction and authorizes the courts of any state to assume jurisdiction of labor disputes having an inconsequential effect on commerce, it was not at all directed to the problem of the possible effect of a labor dispute on the life of a community. It had only to do with the question of whether the National Labor Relations Board should be involved in the dispute. The right of the State to seize properties of a public utility and operate the same is not remotely involved in this Amendment. No intent appears to exclude the right of a State to act in emergency situations or to exercise its police powers.

The King-Thompson Act, to the extent involved in this case and as construed by the Missouri Supreme Court, is consistent with the National Act both before and after its amendment and does not operate to deprive utility employees of any rights guaranteed to them by federal law. Limited as it is to the temporary period of State possession and operation of the utility, the denial of a right to strike at will when jeopardy to the public welfare would result is not an impairment of federal policy or in conflict with the National Act.

IV.

THE KING-THOMPSON ACT AS CONSTRUED AND APPLIED BY THE MISSOURI SUPREME COURT DOES NOT DENY DUE PROCESS OR RESULT IN INVOLUNTARY SERVITUDE.

Appellants argue the abstract proposition that the King-Thompson Act is invalid as denying due process of law, upon the premise that it prohibits a utility strike without substituting an equivalent for it. In making this contention, appellants wholly ignore not only the construction placed upon the Act by the Court below, but the judgment appealed from. Appellants were enjoined from striking against the State of Missouri during the period of the temporary emergency and while the State was in possession of the properties of the Company. The employees have not been deprived of the right to strike against the Company. Moreover, even the injunction against a strike while the State of Missouri is in possession is for a limited period only. The right to use the strike weapon is only temporarily postponed, not prohibited, by the injunction issued under the Missouri Act, and then only to the extent necessary to protect the public welfare. The action was taken by the State under the police power, which extends to all the great public needs, particularly when deemed immediately necessary to the public welfare. *Day-Brite Lighting, Inc.*, v. *Missouri*, 342 U.S. 421; *Noble State Bank* v. *Haskell*, 219 U.S. 104, 111.

The argument relating to due process is predicated upon the theory that collective bargaining without the right to strike is meaningless in that it deprives the employee of the power to make effective demands. But since the basic premise of appellants is erroneous, it follows that appellants could not have been deprived of due process. The employer knows that a strike may follow if satisfactory

terms are not agreed upon. The employer also knows that the State will not and cannot retain possession of its property except during the temporary emergency period. Hence, in any event, the threat of a strike as an economic weapon to enforce union demands still hangs over the employer after the seizure as well as before.

Appellants argue that the "fatal" defect in the Missouri Act is that it is arbitrary and capricious in that it deprives them of the only effective weapon in the struggle with their employer. To the contrary, the statute recognizes the continued existence of the weapon but merely affects the timing of its use. The due process clause is not to be so broadly construed that the State Legislature "is put in a strait jacket" in dealing with conditions involving an immediate threat to the public welfare. *Lincoln Federal Labor Union* v. *Northwestern Iron & Metal Co.*, 335 U.S. 525, 536-7. Due process requires only that the law be not unreasonable, arbitrary or capricious. Surely, a statute enacted under the police power which has for its sole object the protection of the public interest against imminent disaster by postponing, but by no means prohibiting, a strike cannot be deemed to be unreasonable, arbitrary or capricious.

Appellants' argument is directed against statutes such as this Court held invalid in the Wisconsin *Amalgamated Association* case and has no application to the King-Thompson Act as construed by the Missouri Supreme Court. In truth, appellants' contention, though not so spelled out in its argument, is that due process requires that the employees have the right to exercise the strike weapon at any particular instant the union chooses, even though by its choice of a particular instant the public rather than the employer is substantially affected, and disaster to the public may ensue.

The "right" to strike has never been equated to any constitutional guaranty. *Dorchy* v. *Kansas*, 272 U.S. 306, 311. Missouri makes no attempt to "absolutely prohibit" such right. Insofar as due process is concerned, it should be sufficient that the right to strike exists and is recognized rather than such right be authorized for use at a time when it will result in grave jeopardy to the public health, safety and welfare. "All rights are derived from the purposes of the society in which they exist; above all rights rises duty to the community." Mr. Justice Brandeis (dissenting) in *Duplex Printing Press Co.* v. *Deering*, 254 U.S. 443, 488.

The further contention that the King-Thompson Act results in "involuntary servitude" is a purely hypothetical argument wholly unwarranted by any facts in this case. Section 295.210 of the King-Thompson Act provides that no employee shall be required to render labor service without his consent and that the Act shall not be construed so as to make the quitting of his job by an individual employee an illegal act. The injunction in this case is directed solely against a strike or concerted refusal to work during the temporary period of State operation and under no circumstances compels any individual employee to continue in the service of either the State or the utility. Appellants' argument is based upon the erroneous theory that the King-Thompson Act contains an absolute prohibition against the right to strike, whereas in truth the right is recognized and in nowise affected except only as to the time at which it may be exercised. The record in this case wholly fails to support any contention that any person has been compelled to work against his will. There is no live issue in this case respecting involuntary servitude.

What this Court said in *International Union* v. *Wisconsin Employment Relations Board*, 336 U.S. 245, 251, is peculiarly apposite here:

"The Union contends that the statute as thus applied violates the Thirteenth Amendment in that it imposes a form of compulsory service or involuntary servitude. However, nothing in the statute or the order makes it a crime to abandon work individually (compare Pollock v. Williams, 322 U.S. 4, 88 L. Ed. 1095, 64 S. Ct. 792) or collectively. Nor does either undertake to prohibit or restrict any employee from leaving the service of the employer, either for reason or without reason, either with or without notice. The facts afford no foundation for the contention that any action of the State has the purpose or effect of imposing any form of involuntary servitude."

CONCLUSION

For the reasons stated, this case is moot, and the appeal should be dismissed. Should the Court consider the appeal on the merits, the judgment of the Missouri Supreme Court should be affirmed.

Respectfully submitted,

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EXECUTIVE ORDER

Warren E. Hearnes, Secretary of State

(Filed December 28, 1962.)

WHEREAS, on November 13, 1961, I issued my Proclamation declaring that, as a result of a labor dispute between Kansas City Transit, Inc., a public utility furnishing public passenger transportation service in the State of Missouri, and Division 1287 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, the recognized bargaining agent of the employees of Kansas City Transit, Inc., a strike threatened to interrupt the operation of Kansas City Transit, Inc., in the State of Missouri, and that such threatened strike and threatened interruption of the operation of Kansas City Transit, Inc., jeopardized the public interest, health and welfare, and

WHEREAS, by said Proclamation of November 13, 1961, I declared that the exercise of the authority vested in me by Chapter 295, and particularly Section 295.180, RSMo 1959, was necessary to insure the operation in Missouri of Kansas City Transit, Inc., a public utility, and

WHEREAS, by my Executive Order No. 1, dated November 13, 1961, I did, by virtue of authority vested in me by Chapter 295, and particularly Section 295.180, RSMo 1959, take possession of the plants, equipment and all facilities of Kansas City Transit, Inc., located in the State of Missouri, for the use and operation by the State of Missouri in the public interest, effective at 11:59 o'clock P.M., Central Standard Time, Monday, November 13, 1961, and

WHEREAS, by my Executive Order No. 2, dated November 13, 1961, I ordered that Daniel C. Rogers, Chairman of the Missouri State Board of Mediation, acting as

my agent, take possession of the plants, equipment and facilities of Kansas City Transit, Inc., in the State of Missouri, for the purpose of carrying out the provisions of said Order No. 2, said Proclamation and said Order No. 1, and

WHEREAS, the labor dispute between Kansas City Transit, Inc., and Division 1287 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America remains unresolved, and

WHEREAS, the authority conferred upon me by Chapter 295, and particularly Section 295.180, RSMo 1959, is exercisable only for the purpose of protecting the citizens of this State from disaster in an emergency situation, and

WHEREAS, after investigation, I find that continued exercise by me of such authority is not justified in the circumstances of the aforesaid labor dispute.

NOW, THEREFORE, I, JOHN M. DALTON, GOVERNOR OF THE STATE OF MISSOURI, under and by virtue of the authority vested in me by the Constitution of Missouri and the statutes, including Chapter 295. RSMo 1959, do hereby order that the effect of my aforesaid Proclamation of November 13, 1961 shall terminate at 11:59 P.M. o'clock on Saturday, January 12, 1963; and

I further order that the seizure, pursuant to said Executive Order No. 1, dated November 13, 1961, by the State of Missouri of the plants, equipment and facilities of Kansas City Transit, Inc., located in the State of Missouri shall terminate at 11:59 P.M. o'clock, on Saturday, January 12, 1963; and

I further order that Daniel C. Rogers, acting as my agent, shall relinquish all direction and control over the plants, equipment and facilities of Kansas City Transit,

Inc., effective at 11:59 P.M. o'clock, on Saturday, January 12, 1963.

Done this 28th day of December, 1962.

/s/ John M. Dalton
GOVERNOR

(SEAL)

ATTEST:

/s/ Warren E. Hearnes
SECRETARY OF STATE

/s/ Austin Hill
DEPUTY SECRETARY OF STATE